

FILED

Churchill v. Winter Chevrolet, Co., No. 06-15685

MAR 06 2008

HAWKINS, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I would reverse and remand for a new trial because the jury was not properly instructed under California law on the doctrine of anticipatory repudiation and the consequences that flow therefrom. See Cal. Civ. Code § 1440; Romano v. Rockwell Int'l, Inc., 926 P.2d 1114, 1119–21 (Cal. 1996); Kelly v. Stamps.com Inc., 38 Cal. Rptr. 3d 240, 252 (Ct. App. 2005).